

State of California



Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 • • • 1100 K STREET BUILDING, SACRAMENTO, 95814

Technical Assistance
(916) 322-5662

• • Administration • •
322-5660

• • Executive/Legal • •
322-5901

• • Enforcement • •
322-6441

September 6, 1984

Harry S. Green
1701 Golf Course Drive
Costa Mesa, CA 92626

Re: Advice Letter No. A-84-181

Dear Mr. Green:

On August 6, 1984, I wrote you a letter (A-84-181) explaining how the conflict of interest provisions of the Political Reform Act will apply to the financial interests that you have in the concessions at the Costa Mesa Golf Club. This letter responds to an additional question that you raised.

QUESTION PRESENTED

If you are elected to a seat on the Costa Mesa City Council, will you be allowed to negotiate with the City for a five-year extension of your concession operating agreement?

DISCUSSION

As you know from my previous letter, Government Code Sections 87100 and 87103 require you to abstain from making, participating in the making, or in any way attempting to use your official position to influence, a decision concerning your concession contract if it is foreseeable that it will have a material effect on any of your financial interests.^{1/} However, you will be allowed to negotiate with the City for an extension of your concession operating agreement. This is permitted because Commission regulation 2 Cal. Adm. Code Section 18700(d)(3) and (f)(2) provides that the terms "making," "participating," or "in any way attempting to use your official

^{1/} I discussed your financial interests in my earlier letter.

Harry S. Green
September 6, 1984
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position to influence a governmental decision" do not include actions by a public official relating to the official's compensation or the terms or conditions of the official's contract.

Thank you for seeking our advice on this issue. The advice contained in this letter, and in my previous letter, is confined to the provisions of the Political Reform Act. You should also consider the possible application of Government Code Section 1090, which is under the jurisdiction of the Attorney General's Office. If you have any additional questions about the provisions of the Political Reform Act, please feel free to contact me at (916) 322-5901.

Very truly yours,

Janis Shank McLean
Janis Shank McLean
Staff Counsel
Legal Division

JSM:plh

October 18, 1983

Fair Political Practices Commission
Conflict of Interest Section
1100 K Street Building
Sacramento CA 95814

CONFLICT OF INTEREST LETTER OPINION

William Sousa, a member of the City Council for the City of Stockton, has requested an opinion from the Fair Political Practices Commission as to his participation as a councilmember under the following circumstances.

Councilmember Sousa is married and his wife is employed by a private hospital and earns salary in excess of \$10,000.00. Said hospital applied to and received from the Stockton City Planning Commission a Use Permit to expand its facilities. The Planning Commission's decision has been appealed to the City Council pursuant to the City's ordinances which require the Council schedule and hold a public hearing.

Is Councilmember Sousa disqualified from:

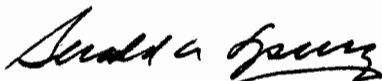
- (a) voting to adopt the resolution setting the public hearing; and/or
- (b) participating in any capacity in the public hearing on the appeal?

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It is the opinion of this office that:

- (a) The setting of the public hearing and ordering the City Clerk to give notice thereof is a ministerial act required by the City's ordinances and Councilmember Sousa is not disqualified from voting to adopt the resolution setting said hearing. (Said resolution is routinely adopted on the "CONSENT" calendar.)
- (b) Councilmember Sousa is disqualified from participating in the public hearing on the appeal as he has a financial interest, his community property interest in his wife's income, in excess of \$250.00 per year. Section 87103(c) and Section 87100, Government Code.

Your review and advice will be appreciated.



GERALD A. SPERRY
CITY ATTORNEY

GAS:cj

cc: Councilmember William Sousa

State of California



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August 6, 1984

Harry S. Green
Costa Mesa Golf Club
1701 Golf Course Drive
Costa Mesa, CA 92626

Re: Your Request for Advice,
Our Advice No. A-84-181

Dear Mr. Green:

Thank you for your request for advice on the conflict of interest provisions of the Political Reform Act.

FACTS

You are a member of the Costa Mesa Sanitary District. You also operate, under a contract with the City of Costa Mesa, the concessions at the City's public golf course, including the bar, restaurant, club house, golf carts, pro shop and other facilities. In return for 5% of your gross income from the concessions, the City allows you to use its buildings and to operate the concessions. You are planning to run for a seat on the Costa Mesa City Council.

QUESTION PRESENTED

Does the fact that you have a contract with the City for the golf course concessions prohibit you from running for a City Council seat?

CONCLUSION

The Political Reform Act will not prevent you from running for a City Council seat. If you are elected, the Act may require you to disqualify yourself on certain decisions.

DISCUSSION

The Political Reform Act will not prevent you from serving as a Costa Mesa City Councilmember. However, it may affect your decisionmaking. Government Code Section 87100^{1/} prohibits you from making, participating in the making, or in any way attempting to use your official position to influence, a governmental decision in which you know or have reason to know you have a financial interest. You have a "financial interest" in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect,^{2/} on:

(a) Any business entity in which you have a direct or indirect investment worth more than one thousand dollars (\$1,000).

* * *

(c) Any source of income ... aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to you within 12 months prior to the time when the decision is made.

You have a 52% investment interest in your concessions that is worth more than \$1,000.^{3/} Your sources of income include the concessions and those individuals or entities who, during the last 12 months, provided you with sufficient gross income such that your pro rata share (52%) amounted to \$250 or more.^{4/} If you are elected to the City Council,

^{1/} Hereinafter all statutory references made are to the Government Code, unless otherwise indicated.

^{2/} For an explanation of the term "material financial effect," see the attached copy of 2 Cal. Adm. Code Section 18702.

^{3/} Although the City owns the building, you own merchandise, golf carts, etc.

^{4/} Section 82030(a) provides that income of an official includes a pro rata share of any income of a business entity in which the official owns a 10% or greater interest.

Harry S. Green
August 6, 1984
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you must disqualify yourself from any decision which will foreseeably have a material financial effect on your investment interest or on any of your sources of income.

If I can be of any additional help to you, please feel free to contact me at 916/322-5901.

Very truly yours,

Janis Shank McLean
Janis Shank McLean
Counsel, Legal Division

JSM:km
Enclosure

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August 10, 1984

State of California
Fair Political Practices Commission
P.O. Box 807
Sacramento, CA 95804

Attn: Janice Shank McLean
Counsel, Legal Division

Re: Your Advice A-84-181

Dear Ms. McLean:

This will acknowledge receipt of your letter of August 6, 1984, for which I thank you.

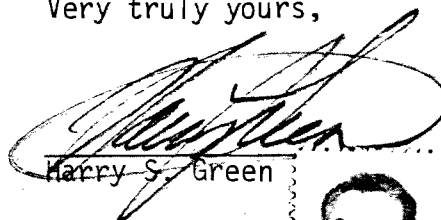
One additional question has arisen which I had hoped would be resolved before the election, however it appears that it may take place after the election for City Council for the City of Costa Mesa.

I am now negotiating with the City for a five-year extension of my operating agreement with the City of Costa Mesa and it is not contemplated that this will be completed prior to the election.

If I am elected as a City councilman, will this preclude the City from negotiating with me for an extension of my current contract, understanding of course that I do not take part in the decision-making on this issue?

Your early attention in this matter will be appreciated.

Very truly yours,


Harry S. Green



HSG:lbj



HARRY S. GREEN, INC., 1701 GOLF COURSE DRIVE, COSTA MESA, CALIFORNIA 92626 • (714) 540-7500

JuTy 5, 1984

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Fair Political Practices Commission
1100 Kay St.
Sacramento, CA 95814

In re: City Councilmen/City Contract Conflict of Interest

Gentlemen:

I am currently an elected member of the Costa Mesa Sanitary District, a district formed under the Sanitary District Act of 1923.

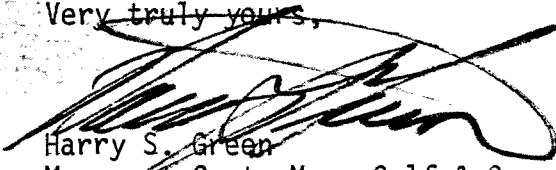
I am also under contract to the City of Costa Mesa for operation of the concessions at their public golf course, being the bar, restaurant, clubhouse, golf carts, pro shop and all facilities except the operation of the course itself.

I propose to run for a seat on the City Council for the City of Costa Mesa and a question of conflict of interest has arisen. It is my understanding that I am not precluded from running for City Council of the City of Costa Mesa merely because I am under contract to the City for the operation of the City Golf Course. It is my understanding, however, that I am precluded from voting as a councilman that directly or indirectly affects my contract with the City unless my vote is necessary to break a tie. It is also my understanding that full disclosure is necessary and this, of course, will be accomplished because although I negotiate with the City Manager on contract matters, the City Council is kept fully advised both by me and by the City Manager.

May I have priority on response to this letter inasmuch as I would like to lay this matter at rest early in my campaign for City Council.

Your attention in this matter will be appreciated.

Very truly yours,


Harry S. Green
Manager, Costa Mesa Golf & Country Club

HSG:lbj



costa mesa
golf club

HARRY S. GREEN, INC., 1701 GOLF COURSE DRIVE, COSTA MESA, CALIFORNIA 92626 • (714) 540-7500